

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAWN D. WILSON,

Plaintiff,

v.

Case No. 17-cv-11498
Honorable Linda V. Parker

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

/

OPINION AND ORDER GRANTING PLAINTIFF'S ATTORNEYS'
MOTION FOR AWARD OF ATTORNEY FEES UNDER 42 U.S.C. § 406(b)
[ECF NO. 32]

Plaintiff commenced this action to appeal a final administrative decision denying her claim for benefits under the Social Security Act. (ECF No. 1.) Pursuant to the Sixth Circuit's decision finding Plaintiff disabled, this Court remanded the matter to the Social Security Administration for the limited purpose of determining the onset of Plaintiff's disability and granting an award of benefits as of that date. (ECF No. 30.) Thereafter, the parties stipulated to an order awarding attorney's fees to Plaintiff's counsel in the amount of \$15,000 under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. (ECF No. 31.) On remand, the Social Security Administration found Plaintiff was found disabled as of August 21, 2010. (ECF No. 32-3.)

Accordingly, the Social Security Administration notified Plaintiff that it would withhold \$39,518.63 for past due disability benefits, representing an award of attorney's fees equal to 25 percent of the total amount of past due disability benefits to which Plaintiff is entitled. (ECF No. 32-4 at Pg ID 1359.) Because Plaintiff had three minor children at the onset of her disability, Plaintiff was also awarded auxiliary benefits and the Social Security Administration notified Plaintiff that it would withhold \$8,690.15 for past due auxiliary benefits, representing an award of attorney's fees equal to 25 percent of the total amount of past due auxiliary benefits to which Plaintiff is entitled. (ECF No. 33)

The matter is presently before the Court on a motion for authorization of attorney's fees pursuant to 42 U.S.C. § 406(b) in the amount of \$48,208.78, on the condition that Plaintiff's attorney return the fees awarded under the EAJA. (ECF No. 32 at Pg. ID 1326.) Counsel seeks this contingency fee based on a written agreement between himself and Plaintiff whereby Plaintiff agreed to a contingent fee of 25% of past due benefits for Plaintiff and her dependents. (ECF No. 32-1.) The Commissioner has not responded to counsel's motion.

Section 406(b) authorizes a court to award a social security claimant the fees for his or her representative in an amount not to exceed 25 percent of the total of the past-due benefits to which the claimant is entitled. 42 U.S.C. § 406(b). While fee awards are possible under both § 406 and the EAJA “the claimant’s attorney

must ‘refund to the claimant the amount of the smaller fee.’” *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (quoting Pub. L. 99-80, § 3, 99 Stat. 186).

Accordingly,

IT IS ORDERED that Plaintiff’s Attorneys’ Motion for Award of Attorney Fees Under § 406(b) of the Social Security Act is **GRANTED** and Plaintiff’s counsel is awarded fees in the amount of \$48,208.78.

IT IS FURTHER ORDERED that Plaintiff’s counsel shall refund to Plaintiff the \$15,000 previously awarded under the EAJA.

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: April 4, 2022